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October 27, 2003

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Response of 4C Entity, LLC to the *Ex Parte* Submission on Behalf of Philips Electronics North America Corporation ("Philips") in MB Docket 02-230 (Digital Broadcast Copy Protection)

Dear Chairman Powell:

On behalf of the 4C Entity, LLC, this letter responds to the letter filed on October 23, 2003 by Philips ("Philips letters") alleging, among other things, that Philips has a patent that contains necessary claims with respect to 4C Technology.

The only apparent relevance of Philips' comments to the pending proceeding is that a technology that may be placed on Table A as an authorized recording technology is subject to what may be at most a dispute about whether licensees for that technology need to license certain patent claims from Philips in order to implement that technology. In that regard, 4C notes the following.

First, 4C and its Founders have consistently supported the idea that manufacturers should have a range of options for recording content in a manner that effectively precludes unauthorized redistribution, including through use of a "bound recording" method or through use of one of a wide range of technologies on Table A, including those supported by Philips. In particular, we believe that 4C's licensed technology should not be the only authorized secure recording technology on Table A, and, indeed, 4C Founders as individual companies have supported the inclusion of various non-4C secure recording technologies, including an encryption based technology which Philips is one of the co-developers. In this context, Table A technologies are simply not mandates or standards for recording broadcast television as Philips' has mischaracterized them, and 4C has not in anyway proposed that they become such. The 4C technologies were developed many years before the broadcast flag discussions were even commenced, and are currently deployed in millions of products for a wide range of uses wholly unrelated to the broadcast flag. Philips' proposal would replace all market based private licensing arrangements for all technologies that might be used for digital broadcast despite the fact that use of those technologies is voluntary and that those technologies have a multitude of applications wholly unrelated to the broadcast flag.

Second, the kind of comment made by Philips with respect to possible intellectual property overlap is not unusual in the context of technologies in this area and should not cause any more concern in this context than these types of allegations raise in other contexts.

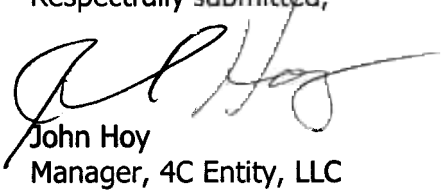
Third, the allegations made are of the type that are routinely worked out through marketplace actions of various kinds, including through determinations that allegedly applicable patents are invalid or are not, in fact, applicable to the technology as alleged, or through decisions by the parties to license relevant claims or to agree not to assert those claims in particular instances. The FCC should "cringe" at the thought of replacing these well developed market based mechanisms.

Finally, with respect to Philips' lengthy description of patent-related precedents in FCC rule-making and Congressional legislation, we note that (1) content protection technologies are of a somewhat different character than other types of technologies, and (2) those precedents do not fit the facts in this case where both multiple Table A options and other "robust methods," including wholly proprietary approaches, are available to participants. We note that content protection is generally not a "feature" of consumer products that consumers will pay extra for. Thus it can't easily support multiple royalties payable to assorted licensors and is one reason 4C operates on essentially a cost recovery basis and does not charge its licensees market rates. Thus licensing structures incorporating reciprocal covenants not to assert intellectual property against other participants in the system have been adopted in a variety of content protection technologies, including the CSS license for DVD Video (the private licensing structure that shapes and influences many content protection technology offerings). Indeed, the Macrovision precedent cited by Philips actually demonstrates that Congress has recognized this point as well, in that it insisted on royalty-free licensing of Macrovision's technology for manufacturers, as Philips' own citation indicates. See Philips letter at footnote 25. Furthermore, we are aware of at least two digital video content protection projects in which Philips participates as a patent licensor, which condition the license upon the licensee granting back to all other licensees a reciprocal non-assertion covenant, not a reasonable and nondiscriminatory license, to any necessary IP owned by the licensee.

With regard to Philips' particular patent allegations, 4C has no substantive comments. We note that, despite Philips's claim to the contrary, no letter or other direct communication was made to 4C itself. Rather, a letter to individual representatives of each of the 4C Founders (IBM, Intel, Toshiba and Matsushita) was delivered only within the past few days while, all but one of those representatives were incommunicado while en route to or in attendance at CPTWG in Los Angeles, a meeting which relevant and informed Philips representatives were also attending.

We would be happy to answer any questions that the Commission or its staff may have in relation to 4C Technology, 4C's licensing of its technologies, or other matters in this proceeding.

Respectfully submitted,



John Hoy
Manager, 4C Entity, LLC

cc:

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